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Before the
Federal Communications Commission
Washington, D.C. 20554



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| In the Matter of | |
| Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended | WT Docket No. 99-87 |
| Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies | RM-9332 |
| Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 | RM-9405 |

**COMMENTS OF AERONAUTICAL RADIO, INC.**

Aeronautical Radio, Inc. (ARINC), by its attorneys, hereby responds to the Commission's Notice of Proposed Rule Making (NPRM) released March 25, 1999 (FCC 99-52), as supplemented by the Public Notice released July 21, 1999 (DA99-1431).

ARINC is the communications company of the air transport industry, which has provided and coordinated the communications requirements of that industry since 1929. Today, in its role as manager of the private aeronautical enroute spectrum, ARINC is the licensee of more than 6,000 stations in the aeronautical enroute service. In addition, ARINC, through its Aeronautical

Frequency Committee (AFC),[1] has assisted the air transport industry in meeting that industry's growing need for land mobile radio communications at the nation's airports. ARINC submits that neither spectrum allotted to the aeronautical nor the spectrum currently used by civil aviation to accommodate their requirements for land mobile communications at airports should be subject to auction under the newly amended Section 309(j) of the Communications Act.

## I. AVIATION RADIO SERVICES

The Aviation Radio Services under Part 87 of the Commission's Rules fall squarely within the definition of public safety radio services in Section 309(j)(2) of the Communications Act that should be exempt from auction.[2] In adopting the expanded auction authority, Congress expressly exempted radio services, such as the Aviation Radio Services, that are primarily used for safety of life, health or property and are not made commercially available to the public. Section 309(j)(2) of the Act provides

> The competitive bidding authority granted by this subsection shall not apply to licenses or construction permits issued by the Commission —
>
> > (A) for public safety radio services, including private internal radio services used by state and local governments

[1] The AFC consists of representatives from the Aircraft Owners and Pilots Association (AOPA), Helicopter Association International (HAI), National Business Aircraft Association (NBAA), American Airlines, America West Airlines, Continental Air Lines, Delta Air Lines, Federal Express, Northwest Airlines, Trans World Airlines, United Airlines, United Parcel Service, and US Airways. Representatives of the Air Transport Association (ATA), the International Air Transport Association (IATA), and the Federal Aviation Administration (FAA) are non-voting, associate members.

[2] NPRM ¶ 27; H.R. Conf. Rep. No. 105-217, 105th Cong., 1 Sess., at 572 (1997).

and non-government entities that and including emergency road services by not-for-profit organizations, that —

(i) are used to protect the safety of life, health or property; and

(ii) are not made commercially available to the public; . . .

The aeronautical enroute service, one of the Aviation Radio Services, falls within this exception because, as licensed to ARINC, it is (1) a private internal radio service, (2) used to protect the safety of life, health and property in the air, and (3) it is not made available commercially to the public.

### A. The Aeronautical Enroute Service Is a Private Internal Radio Service.

The Commission has solicited comment on the meaning of "private internal radio services." ARINC submits that the aeronautical enroute is both private and internal, even though the stations are licensed to ARINC and ARINC uses these licenses for services that are shared by aircraft operators that enter into cooperative arrangements with ARINC. The Commission should designate private mobile services offered on a cooperative or multiple use basis as private internal radio services.[3]

Communications handled over stations in the aeronautical enroute service are not accessible to, or used by, the public at large. All of the stations are licensed to ARINC. Individual stations may be operated, subject to ARINC's licensee control, by the individual airspace user or directly by ARINC personnel using ARINC-owned facilities. The latter arrangement is used for shared voice and data networks that enable all carriers to meet their

[3] *See* NPRM ¶ 33.

obligations to have aeronautical operational control communications under the safety regulations of the Federal Aviation Administration (FAA).[4] However, the communications over aeronautical enroute facilities, whether staffed by the user or by ARINC, originate at the aircraft operator's premises and terminate in the aircraft in flight, or visa versa. The only times that a communication would include entities other than the aircraft operator would be when, at the request of the aircraft operator, emergency information is required from an aircraft manufacturer or other agency concerning the immediate safety of the flight. Thus, the ARINC system is used for private internal communications of the airspace users.

Non-government entities providing public safety radio communications on a noncommercial basis should not be required to obtain governmental authority, at least insofar as the aviation is concerned.[5] The airspace users have been managing the aeronautical spectrum for 70 years and have done so admirably through ARINC. The 70 year history of ARINC and aviation use of radio communication predates the establishment of the FAA or its predecessor. There is no reason at this point to establish any different licensing for aviation spectrum.

### B. The Aeronautical Enroute Service Is a Safety Service.

The aeronautical enroute service utilizes spectrum allocated by the International Telecommunication Union (ITU) to the aeronautical mobile (R) service. Internationally, the aeronautical mobile (R) service is limited to communications "relating to the safety and

[4] *See* 14 C.F.R. § 121.99.

[5] NPRM ¶ 38.

regularity of flight."[6] Domestically, stations in the aeronautical enroute service are limited to communications relating to the "safe, efficient and economical operation of aircraft."[7] Public correspondence is expressly prohibited under the FCC's Rules and the International Radio Regulations on these communications facilities.[8] The aeronautical enroute service is exclusively safety-related.[9]

### C. The Aeronautical Enroute Service Is Not Commercially Available to the Public.

The aeronautical enroute service is not "made commercially available to the public." The community of airspace users came together and established ARINC with which cooperative arrangements are made for access to aeronautical enroute communications facilities in the United States. The FCC's rules require that ARINC make available service to in the aircraft operators willing to enter into such a cooperative agreement. These agreements are non-commercial. The Commission has also recognized that the Aviation Radio Services are not available to the public at large.[10]

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[6] ITU Rad.Reg. S43.1 (1998).

[7] 47 C.F.R. § 87.261(a). *See* 47 C.F.R. § 87.185(a).

[8] *See* ITU Rad.Reg. S43.4; 47 C.F.R. § 87.261(a). Section 87.265 of the Rules permits, on a secondary basis, non-public "administrative communications" on data communications channels. The aeronautical administrative communications provision was added because some members of the civil aviation community wished a means of handling non-public messages to improve service to their passengers. As a practical matter, this service never developed, and administrative messages are rarely, if ever, transmitted over ARINC's ACARS system.

[9] *Cf.* ARINC v. AT&T, 4 F.C.C. 155 (1937).

[10] NPRM ¶ 51; CMRS Second Report and Order, 9 FCC Rcd 1411, 1440 (1994).

Based on the foregoing, it is clear the aeronautical enroute service should be exempt from auction under Section 309(j) of the Act.

## II. AVIATION LAND MOBILE RADIO SERVICES

In addition to aeronautical communications, the air transport industry makes extensive use of land mobile communications to promote the safety and efficiency of air transport operations at the nation's airports. The communications on airports are largely handled over low power portable radios, communicated with each others and base stations over one or more repeaters located around the airport facilities. In recognition of this high-density, low-power communication requirement, the Commission , in 1968, made available ten frequencies in the 450 MHz band (totaling 250 kHz in each direction) for use by air carriers to 50 miles of the airports serving the nation's largest cities (the so-called Aviation Terminal Use or ATU channels).[11] Since this allotment of channels was made, the passenger traffic has grown from about 150 million passengers annually to more than 600 million revenue passengers last year.

These ATU channels cannot meet the needs of aviation for radio communications at airports. ARINC operates trunked 800 MHz radio systems on a cooperative basis at 16 airports. Individual airlines also have some 800 MHz and 900 MHz trunked facilities at some airports to accommodate the extremely high level of use in the airport environment. These 800 MHz and 900 MHz channels are largely exhausted in metropolitan areas where the need is the greatest. As

[11] Amendment of Parts 89, et al., 11 F.C.C.2d 648 (1968). The original zone of protection was 75 miles, but this radius was reduced to 50 miles in 1986 with the concurrence of ARINC and the air transport industry. Amendment of Part 90, 60 R.R.2d 379 (1986).

is the case with the aeronautical radio services, the ATU channels and aviation use of 800 MHz and 900 MHz channels should remain exempt from auction.

### A. Aviation's Land Mobile Services Are for Private Internal Communications.

In the 450 MHz ATU band, the facilities are almost exclusively licensed to the individual airline and used for their own private internal communications. In some cases, ARINC is the licensee as an accommodation to a particular user, but subject to ARINC licensee control of such facilities, the facilities are provided and manned by the end user and the communications are internal. The trunked systems licensed to ARINC are owned and operated by ARINC and used to provide service to multiple end users at an airport. Pursuant to Section 90.179, these communications facilities are shared, non-commercial operations and should be considered private internal communications of the airport tenants.

### B. Aviation's Land Mobile Services Are Safety Services.

The land mobile stations serving the nation's airports fall within the definition of public safety even though some of the communications handled may relate to the conduct of the business of the air transport company. In 1998, more than 600 million passengers boarded airlines in the United States. Hundreds of thousands more work at the airport everyday. Everyday millions of people pass through our airports. Aviation uses land mobile communications to ensure that this passage is as safe and efficient as practicable. Wheelchairs must meet arriving passengers; medical assistance must be dispatched; gate and ticket agents must coordinate the movement and accommodations of the traveling public, especially in times

of stress; and airport security must be maintained. The health and safety of these people and the safety of their property depends upon the land mobile radio facilities at the airport.[12]

### C. Aviation's Land Mobile Services Are Not Commercially Available to the Public.

ARINC and the airline's 800 MHz and 900 MHz trunked system and aviation's ATU channels are operated on a non-commercial, non-public basis. The systems are operated by the individual user as are shared pursuant to Section 90.179 of the Rules. In either event, the operator must be non-commercial. In addition, these systems are not indirectly connected to the public telephone in data vehicles so as to be given to the public. Thus, these services should be exempt from the auction authority under Section 309(j) of the Act.

## III. OTHER LAND MOBILE MATTERS

The FCC also has before it three related land mobile issues: the UTC *et al.* petition to create a public service radio pool,[13] AMTA's request that narrowband technology in land mobile bands between 222 MHz and 896 MHz be compiled,[14] and NexTel's request for waiver of the 800/900 MHz rules that prohibit interservice sharing between private land mobile and commercial mobile radio service.[15]

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[12] *See* Skycomm, Inc., Private Land Mobile Communications Requirements of Passengers and Freight Air Carriers at Airports (Sept. 30, 1996).

[13] RM-9405; *see* NPRM ¶¶ 41-42.

[14] RM-9332; *see* NPRM ¶ 71.

[15] Public Notice released July 21, 1999 (DA 99-1431).

*Public Service Radio Pool.* The substance of the UTC petition was addressed by ARINC's comments filed in December 23, 1998, and ARINC's views remain unaltered. If there is a need or justification for a public service radio pool, the ATU and 800/900 MHz channels used by the air transport industry should be included.

*Narrowband Technology.* AMTA would require that land mobile systems operate between 222 MHz and 896 MHz be required to provide the equivalent of one voice-path in a 12.5 kHz channel or operate on a secondary basis. This proposal is a step away from a mandatory phase out of existing 25 kHz equipment.[16] ARINC and aviation agree that transition to move specifically efficient technology is in the public interest and further regulations to encourage this may be necessary in the future. For the present, however, ARINC submits that the current shortage of land mobile spectrum, especially ATU and 800/900 MHz spectrum for use at airports will be sufficient encouragement to ensure a reasonably paced transition. No further rules on this should be adjusted at the present.

*Inter-Service Sharing.* Finally, ARINC, as a matter of principle, is concerned about the impact that interservice sharing between private and commercial mobile radio systems may have in the private mobile radio services. However, as a practical matter, all of the 800 MHz and 900 MHz channels have been assigned in the major metropolitan areas. ARINC today is compelled to buy channels to meet some of the growing requirements of the airlines at the nation's airports. Consequently, elimination or relaxation of the rules against interservice sharing in the 800 MHz and 900 MHz bands would have little impact on the availability of spectrum for private land mobile systems.

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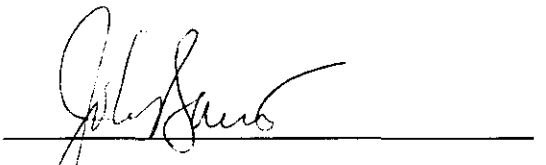
[16] *See* Refarming Report & Order, 10 FCC Rcd 10076, 10096-101 (1995).

* * *

ARINC submits that the private radio facilities used in the 450 MHz ATU band and the 800 MHz/900 MHz trunked radio systems operated by individual airlines and by ARINC should not be subject to auction. If a public service pool is to be created, aviation's use of land mobile should be included in this new pool. Additional encouragement to adopt narrowband technology is not required today. And, relaxation of the interservice sharing rules should be avoided, but would probably not have a major impact on the private land mobile service.

Respectfully submitted,

AERONAUTICAL RADIO, INC.

By: 

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